

Appendix 1

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Note: Appendices in the *Idaho Special Education Manual* contain a variety of technical assistance information, including sample letters and forms, suggestions for dealing with special education issues, and copies of various laws. The appendices should be viewed as additional resources to Chapters 1-14 in the *Idaho Special Education Manual*. The district is *not required* to adopt as policy or procedure any of the appendices in this manual to receive IDEA funding.

Appendix 1A

SECTION 504 OF THE REHABILITATION ACT OF 1973

Section 1. Introduction

Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination against persons with disabilities by any organization or institution that receives federal financial assistance. Because the district receives federal funds, it must comply with the provisions outlined in Section 504. Grant recipients must provide access and opportunities to qualified individuals with disabilities who wish to participate in their services, activities, or programs. Discrimination occurs when an institution fails or refuses to provide an opportunity or a service, benefit, or privilege to a qualified individual with a disability.

Section 504, like the Americans with Disabilities Act of 1990 (ADA), is a broad civil rights statute, and the two laws have many similar or identical provisions. Section 504 affects a wide range of educational practices, including:

1. the provision of services to students;
2. physical accessibility;
3. preparation of self-evaluations and transition plans;
4. employment; and
5. compliance procedures.

Section 2. Definition

Section 504 states that “an individual with a disability is one who has a physical or mental impairment that substantially limits one or more ‘major life activities,’ one who has a record of such an impairment, or is regarded as having such an impairment.”

1. “Major life activities” include functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
2. A “physical or mental impairment” has been defined as:
 - a. any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory; speech organs; cardiovascular; reproductive; digestive; genito-urinary; hermic and lymphatic; skin; and endocrine; or

- b. any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- 3. “Has a record of such an impairment” means anyone who “has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.”
- 4. “Is regarded as having an impairment” means anyone who:
 - a. “has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation”;
 - b. “has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment”; or
 - c. “has none of the impairments defined but is treated by a recipient as having such an impairment.”

It is important to note that certain conditions are excluded from these definitions of disability. For example, Section 504 specifically excludes persons who currently use illegal drugs. In addition, under both Section 504 and the ADA, individuals with disabilities are not protected unless they are also “qualified” to participate in an activity.

Under Section 504, a “qualified” student with a disability, with regard to elementary and secondary education, is defined as:

- 1. a person with a disability who is of an age during which persons without disabilities are provided education; and
- 2. a person with a disability who is of any age during which it is mandatory under state law to provide elementary or secondary educational services to persons with disabilities or to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA 2004).

Depending on the case, individuals may be “qualified” simply by their status as a student or a parent. Educators must consider whether adjustments can be made in policies, practices, or procedures so that students can participate in services, activities, or programs

Section 3. Administrative Requirements

Administrative requirements under Section 504 are broad. The law requires that the district:

1. Prepare a self-evaluation that will determine if the district's current services, policies, and practices discriminate against individuals with disabilities and modify those that do.
2. Designate an individual to oversee compliance.
3. Develop a transition plan if structural changes are needed to achieve program accessibility.
4. Develop a grievance procedure to handle complaints of discrimination based on disability.

The U.S. Department of Education regulations for Section 504 require that students with disabilities be provided with a free appropriate public education (FAPE). These regulations also require identification, evaluation, provision of appropriate services, and procedural safeguards in every public school in the United States. In addition, Section 504 covers all students who meet the definition of having a disability as defined in the IDEA 2004. However, not all individuals who have been determined to have a disability under Section 504 will be considered disabled under the IDEA 2004.

If it is determined that a student is disabled under Section 504, a team must:

1. Evaluate the student.
2. Develop an accommodation plan for any needed service.
 - a. Although there is no requirement that the plan be written, a district would be wise to develop a written plan to document all accommodations that would be provided for the student.
 - b. The plan may also include related services even though the student may not need, or qualify for, special education.
3. Implement the plan for the delivery of that service.

Section 4. Complaint and Enforcement

The Office for Civil Rights (OCR) is responsible for ensuring that educational institutions comply with Section 504. Enforcement agencies encourage informal mediation and voluntary compliance. Complaints related to providing an appropriate public education for students under Section 504 should be addressed to:

Regional Civil Rights Director
Office for Civil Rights, Region X
U.S. Department of Education
915 Second Avenue, Room 3310
Seattle, WA 98174-1099
206/220-7900
TT: 206/442-4542
Fax: 206/220-7887
E-mail: ocr_seattle@ed.gov

Within Idaho, inquiries can be made to:

Idaho State Department of Education
Division of Student Achievement and School Accountability
P.O. Box 83720
Boise, ID 83720-0027
208/332-6910
800/432-4601
TT: 800/377-3529
Fax: 208/334-4664

Appendix 1B

THE AMERICANS WITH DISABILITIES ACT OF 1990

Section 1. Introduction

The Americans with Disabilities Act of 1990 (ADA) is a comprehensive civil rights law barring discrimination against individuals with disabilities. The ADA reinforces or expands rights guaranteed to individuals with disabilities by:

1. the Individuals with Disabilities Education Act Amendments of 1997 (IDEA);
2. Section 504 of the Rehabilitation Act of 1973 (Section 504); and
3. the Carl D. Perkins Vocational and Applied Technology Education Act of 1990 (Perkins Act).

A. Key Principles

The ADA is based on five key principles that have been viewed historically as civil rights for individuals with disabilities:

1. a focus on the individual;
2. integration;
3. equal opportunity;
4. physical accessibility; and
5. the provision of reasonable accommodation and auxiliary aids and services.

B. Effect on Schools

Because the ADA is a civil rights law, it preempts all local, state, and federal laws that grant lesser rights to individuals with disabilities. The ADA does not provide funding to carry out its mandates. Nevertheless, a wide range of public and private institutions, including educational institutions, must comply with the ADA.

The ADA does not directly address schools. Therefore, educators must apply ADA principles to school and training settings without direct guidance. Educators, who already understand and comply with requirements in Section 504 or the IDEA 2004, or with special population requirements in the Perkins Act, are well on their way to complying with the ADA. However, the ADA goes beyond the other three laws. Despite the lack of references to schools, the ADA affects every aspect of the educational process. The ADA mandates cover three broad areas:

1. **Services:** The ADA affects integration, program accessibility, safety, communication, the provision of assistive aids and services, and preparation of a district self-evaluation for compliance.
2. **Physical accessibility:** The ADA affects accessibility audits, removal of barriers both inside and outside a facility, alterations or new construction, and preparation of transition plans.
3. **Employment:** The ADA affects the posting of job notices, setting of job qualifications, interviewing, testing of applicants, hiring, and the provision of reasonable accommodations and training, among other areas.

Section 2. Definition

A. Individual with a Disability

As stated in the ADA, “an individual with a disability is one who has a physical or mental impairment that substantially limits one or more major life activities, one who has a record of such an impairment, or is regarded as having such an impairment.” This definition of an individual with a disability is identical to the definition used in Section 504.

B. “Qualified” Individuals

Under both the ADA and Section 504, individuals with disabilities are not protected unless they also are “qualified” to participate in an activity. Depending on the case, people may be “qualified” simply by their status as a student or a parent. Under the ADA, schools must assist individuals with disabilities who are qualified to participate in school programs from which they might otherwise be excluded. Educators must realize the ADA’s mandate has several implications:

1. Before turning away a student with a disability as unqualified to participate in a school program, educators must consider whether adjustments can be made in policies, practices, or procedures so the student can participate.
2. Educators must ensure that qualifications are relevant.
3. Qualifications must be applied consistently to all individuals.

The ADA does not provide educators with a simple, limited set of requirements to facilitate compliance. The broad, generic nature of the standards highlights the need for educators to use a case-by-case approach in responding to the needs of students with disabilities.

Section 3. Administrative Requirements

The ADA contains five broad administrative requirements for public institutions. These requirements include the following:

1. The district must prepare a self-evaluation that will determine if its current services, policies, and practices discriminate against individuals with disabilities and must modify those that do. For one free copy of *Compliance with the Americans with Disabilities Act: A Self-Evaluation Guide for Public Elementary and Secondary Schools*, call 800/949-4232. Additional copies can be purchased from the Government Printing Office by calling 800/512-1800.
2. An individual in the district must be designated to oversee compliance.
3. A transition plan must be developed if structural changes are needed to achieve program accessibility.
4. A grievance procedure must be developed to handle complaints of discrimination based on disability.
5. The district must inform the public about the ADA.

Section 4. Complaints and Enforcement

Schools are expected to comply with the ADA and Section 504 even though federal agencies will not conduct general compliance monitoring. Instead, the appropriate agencies will investigate specific complaints.

The ADA's enforcement procedures build on those under Section 505 of the Rehabilitation Act of 1973, which also details compliance procedures for Section 504. Section 504, in turn, incorporates by reference the enforcement procedures found in Title VI of the Civil Rights Act of 1964. Educators who are familiar with enforcement procedures under Section 504 can expect the same procedures under the ADA.

For more information, or answers to questions regarding the ADA, contact:

Idaho Task Force on the ADA
350 N 9th Ste 102
Boise, Idaho 83702
208/344-5590
Fax: 208/344-5563
E-mail: adataskforce@qwest.net

Information in this appendix was taken in part from *The Educator's Guide to The Americans with Disabilities Act*, published by the American Vocational Association.

Appendix 1C COMPARISON OF THE IDEA, SECTION 504, AND THE ADA

Section 1. General Provisions

IDEA	504	ADA
<p>The Individuals with Disabilities Education Act (IDEA) is a federal education law that provides grants to assist states in providing special education services.</p> <p>Parts A and B of the IDEA affect public schools. Participation by states is voluntary. Once a state agrees to participate it must ensure that all students with disabilities in the state receive a free appropriate public education.</p> <p>Failure to meet IDEA requirements results in a loss of IDEA funds to the state.</p> <p>Part C provides services for infants and toddlers and is administered by the Department of Health and Welfare in Idaho.</p> <p>Part D provides funds for research, personnel development, and other discretionary programs.</p>	<p>The Rehabilitation Act of 1973 is a comprehensive federal law that provides for state vocational rehabilitation services, commissions for the blind, independent living centers, a National Council on Disability, and a client assistance program.</p> <p>Section 504 is a portion of the Rehabilitation Act that prohibits discrimination on the basis of disability. Individuals with disabilities cannot be excluded from or denied the benefits of any program or activity receiving federal financial assistance.</p> <p>Section 504 is mandatory. No additional funding is provided. Failure to comply could result in potential loss of all federal funds.</p>	<p>The Americans with Disabilities Act (ADA) is a broad civil rights law that was passed in 1990.</p> <p>Titles I and II affect public schools. Title I prohibits discrimination in employment if an organization employs 15 or more individuals. Title II deals with public services, including schools.</p> <p>Title III protects the rights of individuals with disabilities in privately operated public settings (such as day cares, restaurants, and private schools, as long as they are not religious-operated). Title IV requires accessible telecommunications. Title V includes miscellaneous provisions.</p> <p>Participation is mandatory. No funding is provided. Failure to comply could result in the award of compensatory and punitive damages.</p>

Section 2. Student Eligibility

IDEA	504	ADA
<p>Children ages 3 through 21 are eligible for Part B if they have a disability <i>and</i> need special education.</p> <p>The law lists specific disability categories including autism, deaf-blindness, developmental delay, emotional disturbance, hearing impairment, cognitive retardation, orthopedic impairment, health impairment, speech or language impairment, learning disability, traumatic brain injury, and visual impairment. The law does not require the district to label a student by category of disability to provide services.</p> <p>A team of qualified professionals and the parent (the evaluation team) determines eligibility.</p> <p>Infants and toddlers, birth through 2 years of age, with development delays are eligible under Part C of the IDEA.</p>	<p>504 automatically protects children who are eligible for Part B.</p> <p>In addition, all age ranges of individuals who have, have had, or are regarded as having a physical or mental impairment that substantially limits a major life activity are protected. Generally, districts need to be concerned only with students who currently have a disability.</p> <p>Life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself and performing manual tasks. The life activity that is affected does not have to be learning for a student to have 504 protections at school. To be protected, an individual must be “otherwise qualified” for the program or activity.</p> <p>Eligibility is determined by a team of people (it is a best practice to include parents on the team, but it is not required).</p>	<p>Same as 504.</p> <p>A public entity may not impose eligibility criteria for participation in its programs or activities that screen out, or tend to screen out, individuals with disabilities, unless necessary for legitimate safety reasons.</p>

Section 3. Educational Rights

IDEA	504	ADA
<p>Eligible students are entitled to a free appropriate public education (FAPE). FAPE includes special education and related services.</p> <p><i>Free</i> means at public expense. <i>Appropriate</i> means in conformance with an IEP that meets legal requirements. <i>Public</i> means provided under public direction and supervision. <i>Education</i> includes preschool, elementary, and secondary, but not higher education.</p> <p>FAPE is further defined by case law as an IEP that is developed in accordance with the law's procedures and that is reasonably calculated to ensure educational benefit. The benefit must be more than trivial.</p> <p>The district must provide related services that are necessary to assist the student to benefit from special education. If a student does not need special education, he or she is not entitled to related services. In Idaho, speech/language therapy is defined as special education and can be a stand-alone service.</p>	<p>Many people think 504 only requires the provision of reasonable accommodations. This is true in employment and higher education, but not in public schools (elementary and secondary).</p> <p>Eligible preschool, elementary, and secondary students are entitled to FAPE. FAPE is defined by 504 as regular <i>or</i> special education <i>and</i> related aids and services to meet an eligible student's needs as adequately as the needs of students without disabilities are met.</p> <p>In practice, if a student requires special education, he or she is usually served under the IDEA.</p> <p>504 requires that a plan be implemented for eligible students. The plan does not have to be written, but districts are advised to use a written accommodation plan to document the accommodations that have been determined necessary and will be provided.</p> <p>The provision of related services may be required even though a student does not need special education.</p>	<p>The ADA does not require the provision of FAPE to eligible students.</p> <p>However, the ADA provides a layer of protections in combination with Section 504 actions.</p> <p>Title II of the ADA includes a general provision that prohibits discrimination and denial of participation on the basis of disability. It also provides for equality of opportunity to participate in or benefit from programs and services.</p> <p>The ADA requires reasonable accommodations for students with disabilities.</p>

Section 4. Evaluations

IDEA	504	ADA
<p>Written notice and consent are required before an evaluation or reevaluation is conducted. Reevaluations are required every 3 years.</p> <p>A parent and/or adult student can obtain an independent educational evaluation at public expense if he or she disagrees with the district's evaluation, unless the district goes to a due process hearing.</p>	<p>Notice is required but consent is not. Consent is a good practice. Periodic reevaluations are required; 3 years is a best practice.</p> <p>There are no provisions for independent educational evaluations.</p>	<p>The ADA does not delineate specific evaluation requirements but reasonable accommodations must be provided for entrance exams.</p>

Section 5. Least Restrictive Environment

IDEA	504	ADA
<p>Districts must ensure that a continuum of alternative placements exists for students with disabilities. A student cannot be removed from the general education classroom or curriculum unless the nature or severity of his or her disability is such that the student cannot be satisfactorily educated in the general education classroom with supplementary aids and services.</p> <p>Placement decisions must be made annually by the IEP team.</p>	<p>504 has the same requirements for a continuum of alternative placements as the IDEA and presumes that students are educated in the general education classroom if possible.</p> <p>504 does not mention the general education curriculum.</p> <p>Placement decisions are made annually by a group of knowledgeable people who draw on information from a variety of sources.</p>	<p>Individuals with disabilities must be integrated to the maximum extent appropriate. Separate programs are permitted where necessary to ensure equal opportunity, but exclusion from the regular program is prohibited. Reasonable accommodations may be required in the regular program even when a special program for individuals with disabilities is provided. The existence of a special program may affect the extent of accommodations that must be provided in the regular program.</p>

Section 6. Procedural Safeguards

IDEA	504	ADA
<p>A parent and an adult student must receive notice when the district proposes or refuses to initiate or change identification, evaluation, placement, or the provision of FAPE. The notice, which must be written, includes specific components. It is required for any change in placement.</p> <p>Written consent is required for all assessments and initial placement in special education.</p> <p>Elaborate and complex procedures are set forth in the law for the discipline of students with disabilities. A student cannot be expelled for behavior that is a manifestation of his or her disability. Educational services for a student who is expelled for behavior that is not a manifestation of his or her disability may <i>not</i> cease.</p>	<p>A parent must receive notice when the district proposes or refuses to initiate or change identification, evaluation, placement, or the provision of FAPE. The notice does not have to be written, but it is a good practice. Notice is only required for significant changes in placement. It is a good practice to provide notice for all changes in placement.</p> <p>Expulsion and long-term or repeated suspensions are considered significant changes in placement and invoke specific procedural safeguards. A student cannot be expelled for behavior that is a manifestation of his or her disability. Educational services for a student who is expelled for behavior that is not a manifestation of his or her disability may cease.</p>	<p>The ADA does not delineate specific procedural safeguards.</p>

Section 7. Resolving Disagreements

IDEA	504	ADA
No provisions for a compliance coordinator or a grievance procedure.	If a district employs more than 15 people it must designate a 504 compliance coordinator and have a grievance procedure for parents, students, and staff.	Internal grievance procedures are required for entities that employ more than 50 people.
A parent and/or adult student or the district may request mediation. It is voluntary and provided by the State Department of Education (SDE).	No provisions regarding mediation.	No provisions for mediation.
Any individual may file a formal complaint with the SDE.	Formal complaints may be filed with the Office for Civil Rights (OCR).	Complaints can be filed with the OCR or the Department of Justice. The OCR investigates complaints under 504 and the ADA.
A parent and/or adult student or the district may request a due process hearing, which has a 45-day time line for issuance of a decision. Decisions may be appealed to civil court. Administrative remedies must be exhausted before filing a suit in civil court.	Districts must have a hearing procedure, which can be the same as the IDEA procedure but does not have to be. Parents can file a case in civil court without exhausting administrative remedies.	No administrative hearing provision exists under the ADA, but individuals can file a suit in federal district court.

Appendix 1D

SUMMARY OF THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT

Section 1. Introduction

The McKinney-Vento program is designed to address the problems that homeless children and youth have faced in enrolling, attending, and succeeding in school. Under this program, State educational agencies (SEAs) must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youth. Homeless children and youth should have access to the educational and other services that they need to enable them to meet the same challenging State student academic achievement standards to which all students are held. In addition, homeless students may not be separated from the mainstream school environment. States and districts are required to review and undertake steps to revise laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youth. *Idaho addresses this issue in Idaho Code 33-1404: Homeless children and youth may attend any school district or school within a district without payment of tuition when it is determined to be in the best interest of that child.*

The program is authorized under Title VII-B of the McKinney-Vento Homeless Assistance Act (42 USC 11431 et seq.), (McKinney-Vento Act). The program was originally authorized in 1987 and, most recently, reauthorized by the No Child Left Behind Act of 2001.

Section 2. Definition

The McKinney-Vento Act defines “homeless children and youth” as individuals who lack a fixed, regular, and adequate nighttime residence. The term includes:

1. Children and youth who are:
 - a. sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as *doubled-up*);
 - b. living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;
 - c. living in emergency or transitional shelters;
 - d. abandoned in hospitals; or
 - e. awaiting foster care placement.

2. Children and youth who have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;
3. Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
4. Migratory children who qualify as homeless because they are living in circumstances described above.

Section 3. Administrative Requirements

Some of the key provisions of the McKinney-Vento Homeless Assistance Act are as follows:

1. Districts are prohibited from segregating a homeless child or youth in a separate school, or in a separate program within a school, based on the child or youth's status as homeless.
2. Districts must adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of the unaccompanied youth, the liaison) to and from the school of origin. There are specific provisions regarding the responsibility and costs for transportation.
3. If a dispute arises over school selection or placement, the district must admit a homeless child or youth to the school in which enrollment is sought by the parent or guardian, pending resolution of the dispute.
4. School placement determinations must be made on the basis of the "best interest" of the child or youth. In determining what a child or youth's best interest is, the district must, to the extent feasible, keep a homeless child or youth in the school of origin, unless doing so is contrary to the wishes of the child or youth's parent or guardian.
5. Every district, whether or not it receives a McKinney-Vento sub grant, must designate a local liaison for homeless children and youth.

Section 4. Complaints and Enforcement

School districts, as recipients of Federal financial assistance and as public entities, must ensure that their educational programs for homeless children are administered in a nondiscriminatory manner. Although the Department's Office for Civil Rights (OCR) enforces Federal laws that prohibit discrimination, under the Homeless Assistance Act, each district is to establish an informal process for resolving disputes that may arise. The State Department of Education provides guidance on the process and the time limit for the dispute process if the matter is appealed to the SDE.

This process can be found at the following link:

<http://www.sde.idaho.gov/sasa/docs/new/Homeless.doc>.

For non-regulatory guidance related to the Act please go to:

http://www.sde.idaho.gov/sasa/documents/MVHomelessNon-RegulatoryGuidance_000.doc